

Foster Garvey Files Opposition to Cert Petition

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Foster Garvey Newsroom

On December 23, 2019, Foster Garvey and co-counsel Maynard Cooper & Gale, PC, filed a [Brief in Opposition to a petition for a writ of certiorari](#) with the U.S. Supreme Court in *Shrinivas Sugandhalaya LLP v. Balkrishna Setty, et al.* The petition for a writ of certiorari presented two questions: (1) does the New York Convention permit a nonsignatory to an arbitration agreement to compel arbitration on the doctrine of equitable estoppel, where the alleged misconduct has no relation to the arbitration agreements, and (2) does a district court have the discretion to deny a stay under Section 3 of the Federal Arbitration Act when it is requested by a nonsignatory of an arbitration agreement who does not have the right to compel arbitration under the agreement?

The Brief in Opposition argued that the Supreme Court should deny certiorari for two reasons. First, regardless of how the first question presented is resolved, it will not change the final outcome of this case. The petitioner's efforts to compel arbitration will fail. Second, despite petitioner's arguments to the contrary, there is no Supreme Court authority prohibiting a district court from denying a stay under Section 3 of the Federal Arbitration Act when the stay is requested by a nonsignatory to the arbitration agreement who does not have the right to compel arbitration. The 9th Circuit's decision therefore did not conflict with any Supreme Court precedent and there are no grounds for certiorari.

The dispute, filed in December 2016, is between two Indian-based incense manufacturers. K.N. Satyam Setty formed an incense manufacturing and distribution partnership in India and marketed the incense under the name SHRINIVAS SUGANDHALAYA. After Mr. K.N. Setty's death, his two sons, Balkrishna Setty and Nagraj Setty, planned to continue the partnership and split the profits equally. The brothers entered

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into a Deed of Partnership, which contained an arbitration clause. In 2014, the partnership between the brothers broke down and each began manufacturing incense products through their own companies. Balkrishna Setty formed Shrinivas Sugandhalaya (BNG) LLP (“SS Bangalore”) and Nagraj Setty formed SS Mumbai. After the separate entities were formed, SS Mumbai began misrepresenting where its products were manufactured by putting SS Bangalore’s address on its packaging. In addition, SS Mumbai interfered with SS Bangalore’s business by sending cease and desist letters to its customers stating that SS Bangalore was infringing on SS Mumbai’s trade dress rights. SS Mumbai also fraudulently obtained trademark registrations for the SHRINIVAS SUGANDHALAYA mark that had previously been used by the partnership.

Balkrishna Setty filed the action on December 15, 2016 against SS Mumbai and R. Expo (USA), Inc. The claims stemmed from SS Mumbai’s anticompetitive actions in the United States. SS Mumbai filed a motion to dismiss or stay the action seeking to enforce the arbitration clause of the Partnership Deed, which SS Mumbai did not sign. The District Court of the Western District of Washington denied the motion in June 2018, holding SS Mumbai could not enforce the arbitration agreement because (1) it was not a signatory of the Partnership Deed, (2) it was not a third-party beneficiary of the Partnership Deed, and (3) equitable estoppel did not apply.

SS Mumbai appealed the order to the U.S. Court of Appeals for the 9th Circuit. The 9th Circuit affirmed the district court’s denial of SS Mumbai’s motion to dismiss or stay in June 2019. It is this opinion that SS Mumbai is seeking review by the U.S. Supreme Court. Because the 9th Circuit granted SS Mumbai’s motion for stay of mandate pending the outcome of its Petition for Writ of Certiorari, the proceedings in the district court have remained at a standstill since June 2018.

Foster Garvey is proud to act as co-counsel with Maynard Cooper & Gale, PC in representing Balkrishna Setty in this matter.